

By: Senator(s) Carmichael

To: Insurance; Finance

## SENATE BILL NO. 2283

1 AN ACT ENTITLED THE "MISSISSIPPI FIRESAFE CIGARETTE SAFETY  
2 STANDARD AND FIREFIGHTER PROTECTION ACT OF 2008"; TO PROVIDE  
3 DEFINITIONS; TO PROVIDE THAT NO CIGARETTES MAY BE SOLD OR OFFERED  
4 FOR SALE IN THIS STATE OR TO PERSONS LOCATED IN THIS STATE UNLESS  
5 THE CIGARETTES HAVE BEEN TESTED IN ACCORDANCE WITH CERTAIN  
6 RECOGNIZED TEST METHODS AND PERFORMANCE STANDARDS; TO REQUIRE  
7 MANUFACTURERS TO SUBMIT CERTIFICATION OF SAID CIGARETTE TESTING  
8 AND PERFORMANCE STANDARDS; TO PRESCRIBE A FEE TO BE PAID TO THE  
9 STATE FIRE MARSHAL TO DEFRAY THE ACTUAL COST OF PROCESSING,  
10 TESTING AND ENFORCEMENT OF THIS ACT; TO ESTABLISH A REDUCED  
11 CIGARETTE IGNITION PROPENSITY AND FIREFIGHTER PROTECTION ACT  
12 ENFORCEMENT FUND FOR THE DEPOSIT OF SUCH FEES; TO PROVIDE FOR THE  
13 MARKING OF CIGARETTE PACKAGING TO INDICATE COMPLIANCE WITH THIS  
14 ACT; TO PRESCRIBE CIVIL PENALTIES FOR CERTAIN VIOLATIONS OF THIS  
15 ACT; TO ESTABLISH THE FIRE PREVENTION AND PUBLIC SAFETY FUND TO  
16 CONSIST OF ALL PENALTIES COLLECTED TO BE MADE AVAILABLE TO SUPPORT  
17 FIRE SAFETY AND PREVENTION PROGRAMS; TO AUTHORIZE THE STATE FIRE  
18 MARSHAL AND THE COMMISSIONER OF REVENUE TO PROMULGATE NECESSARY  
19 RULES AND REGULATIONS TO IMPLEMENT THIS ACT AND TO CONDUCT  
20 INSPECTIONS TO DETERMINE IF THE CIGARETTES ARE MARKED AS REQUIRED;  
21 TO PROVIDE THAT THIS ACT SUPERCEDES ANY LOCAL ORDINANCE; TO  
22 PROVIDE FOR THE REPEAL OF THIS ACT IF SUPERCEDED BY FEDERAL LAW;  
23 AND FOR RELATED PURPOSES.

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

25 **SECTION 1.** This act shall be known and may be cited as the  
26 "Mississippi Firesafe Cigarette Safety Standard and Firefighter  
27 Protection Act of 2008."

28 **SECTION 2.** As used in this section, unless the context  
29 otherwise requires:

30 (a) "Agent" means any person authorized by the  
31 Commissioner of Revenue to purchase and affix stamps on packages  
32 of cigarettes;

33 (b) "Cigarette" means all rolled, shredded, or cut  
34 tobacco, or any substitute thereof, wrapped in paper, or  
35 substitute thereof, and all rolled, shredded or cut tobacco, or  
36 any substitute thereof, wrapped in homogenized tobacco wrapper,



37 and being within customary cigarette sizes and marketed in  
38 cigarette-type packages;

39 (c) "Manufacturer" means:

40 (i) Any entity which manufactures or otherwise  
41 produces cigarettes or causes cigarettes to be manufactured or  
42 produced anywhere that such manufacturer intends to be sold in  
43 this state, including cigarettes intended to be sold in the United  
44 States through an importer; or

45 (ii) The first purchaser that intends to resell  
46 cigarettes in the United States that are manufactured anywhere  
47 that the original manufacturer or maker did not intend to be sold  
48 in the United States; or

49 (iii) Any entity that becomes a successor of an  
50 entity described in paragraph (c)(i) or (ii);

51 (d) "Quality control and quality assurance program"  
52 means the laboratory procedures implemented to ensure that  
53 operator bias, systematic and nonsystematic methodological errors,  
54 and equipment-related problems do not affect the results of the  
55 testing. Such a program ensures that the testing repeatability  
56 remains within the required repeatability values required by  
57 subsection (1)(f) of Section 3 for all test trials used to certify  
58 cigarettes in accordance with this section;

59 (e) "Repeatability" means the range of values within  
60 which the repeat results of cigarette test trials from a single  
61 laboratory meet at least ninety-five percent (95%) of the time;

62 (f) "Retail dealer" means any person, other than a  
63 manufacturer or wholesale dealer, engaged in selling cigarettes or  
64 tobacco products;

65 (g) "Sale" means, in addition to its usual meaning, any  
66 sale, use, transfer, exchange, barter, gift or offer for sale and  
67 distribution, in any manner or by any means whatsoever;

68 (h) "Sell" means to sell, or to offer or agree to do  
69 the same;



70 (i) "Wholesale dealer" means any person who sells  
71 cigarettes or tobacco products to retail dealers or other persons  
72 for purposes of resale, and any person who owns, operates or  
73 maintains one or more cigarette or tobacco product vending  
74 machines in, at or upon premises owned or occupied by any other  
75 person; and

76 (j) "Commissioner of Revenue" means the Chairman of the  
77 State Tax Commission.

78 **SECTION 3.** (1) Except as provided in subsection (7), no  
79 cigarettes may be sold or offered for sale in this state or  
80 offered for sale or sold to persons located in this state unless  
81 the cigarettes have been tested in accordance with the test method  
82 and meet the performance standard specified in this section, a  
83 written certification has been filed by the manufacturer with the  
84 State Fire Marshal in accordance with Section 4, and the  
85 cigarettes have been marked in accordance with Section 5.

86 (a) Testing of cigarettes shall be conducted in  
87 accordance with the American Society of Testing and Materials  
88 (ASTM) Standard E2187-04, "Standard Test Method for Measuring the  
89 Ignition Strength of Cigarettes."

90 (b) Testing shall be conducted on ten (10) layers of  
91 filter paper.

92 (c) No more than twenty-five percent (25%) of the  
93 cigarettes tested in a test trial in accordance with this section  
94 shall exhibit full-length burns. Forty (40) replicate tests shall  
95 comprise a complete test trial for each cigarette tested.

96 (d) The performance standard required by this section  
97 shall only be applied to a complete test trial.

98 (e) Written certifications shall be based upon testing  
99 conducted by a laboratory that has been accredited pursuant to  
100 standard ISO/IEC 17025 of the International Organization for  
101 Standardization (ISO), or other comparable accreditation standard  
102 required by the State Fire Marshal.



103           (f) Laboratories conducting testing in accordance with  
104 this section shall implement a quality control and quality  
105 assurance program that includes a procedure that will determine  
106 the repeatability of the testing results. The repeatability value  
107 shall be no greater than nineteen-hundredths of one percent  
108 (0.19).

109           (g) This section does not require additional testing if  
110 cigarettes are tested consistent with this section for any other  
111 purpose.

112           (h) Testing performed or sponsored by the State Fire  
113 Marshal to determine a cigarette's compliance with the performance  
114 standard required shall be conducted in accordance with this  
115 section.

116           (2) Each cigarette listed in a certification submitted  
117 pursuant to Section 4 that uses lowered permeability bands in the  
118 cigarette paper to achieve compliance with the performance  
119 standard set forth in this section shall have at least two (2)  
120 nominally identical bands on the paper surrounding the tobacco  
121 column. At least one (1) complete band shall be located at least  
122 fifteen millimeters (15 mm) from the lighting end of the  
123 cigarette. For cigarettes on which the bands are positioned by  
124 design, there shall be at least two (2) bands fully located at  
125 least fifteen millimeters (15 mm) from the lighting end and ten  
126 millimeters (10 mm) from the filter end of the tobacco column, or  
127 ten millimeters (10 mm) from the labeled end of the tobacco column  
128 for nonfiltered cigarettes.

129           (3) A manufacturer of a cigarette that the State Fire  
130 Marshal determines cannot be tested in accordance with the test  
131 method prescribed in subsection (1) (a) shall propose a test method  
132 and performance standard for the cigarette to the State Fire  
133 Marshal. Upon approval of the proposed test method and a  
134 determination by the State Fire Marshal that the performance  
135 standard proposed by the manufacturer is equivalent to the



136 performance standard prescribed in subsection (1)(c), the  
137 manufacturer may employ such test method and performance standard  
138 to certify such cigarette pursuant to Section 4. If the State  
139 Fire Marshal determines that another state has enacted reduced  
140 cigarette ignition propensity standards that include a test method  
141 and performance standard that are the same as those contained in  
142 this section, and the State Fire Marshal finds that the officials  
143 responsible for implementing those requirements have approved the  
144 proposed alternative test method and performance standard for a  
145 particular cigarette proposed by a manufacturer as meeting the  
146 fire safety standards of that state's law or regulation under a  
147 legal provision comparable to this section, then the State Fire  
148 Marshal shall authorize that manufacturer to employ the  
149 alternative test method and performance standard to certify that  
150 cigarette for sale in this state, unless the State Fire Marshal  
151 demonstrates a reasonable basis why the alternative test should  
152 not be accepted under this section. All other applicable  
153 requirements of this section shall apply to the manufacturer.

154 (4) Each manufacturer shall maintain copies of the reports  
155 of all tests conducted on all cigarettes offered for sale for a  
156 period of three (3) years, and shall make copies of these reports  
157 available to the State Fire Marshal and the Attorney General upon  
158 written request. Any manufacturer who fails to make copies of  
159 these reports available within sixty (60) days of receiving a  
160 written request shall be subject to a civil penalty not to exceed  
161 Ten Thousand Dollars (\$10,000.00) for each day after the sixtieth  
162 day that the manufacturer does not make such copies available.

163 (5) The State Fire Marshal may promulgate a subsequent ASTM  
164 Standard Test Method for Measuring the Ignition Strength of  
165 Cigarettes upon a finding that such subsequent method does not  
166 result in a change in the percentage of full-length burns  
167 exhibited by any tested cigarette when compared to the percentage  
168 of full-length burns the same cigarette would exhibit when tested



169 in accordance with ASTM Standard E2187-04 and the performance  
170 standard in subsection (1)(c).

171 (6) The State Fire Marshal shall review the effectiveness of  
172 this section and report findings every three (3) years to the  
173 Lieutenant Governor and the Speaker of the House and, if  
174 appropriate, recommendations for legislation to improve the  
175 effectiveness of this section. The report and legislative  
176 recommendations shall be submitted no later than February 1 of  
177 each three-year period.

178 (7) The requirements of subsection (1) shall not prohibit  
179 wholesale or retail dealers from selling their existing inventory  
180 of cigarettes on or after the effective date of this act if the  
181 wholesale or retailer dealer can establish that state tax stamps  
182 were affixed to the cigarettes prior to the effective date of this  
183 act, and if the wholesale or retailer dealer can establish that  
184 the inventory was purchased prior to the effective date of this  
185 act in comparable quantity to the inventory purchased during the  
186 same period of the prior year.

187 **SECTION 4.** (1) Each manufacturer shall submit to the State  
188 Fire Marshal a written certification attesting that:

189 (a) Each cigarette listed in the certification has been  
190 tested in accordance with Section 3; and

191 (b) Each cigarette listed in the certification meets  
192 the performance standard set forth in subsection (1)(c) of Section  
193 3.

194 (2) Each cigarette listed in the certification shall be  
195 described with the following information:

196 (a) Brand, or trade name on the package;

197 (b) Style, such as light or ultra light;

198 (c) Length in millimeters;

199 (d) Circumference in millimeters;

200 (e) Flavor, such as menthol or chocolate, if

201 applicable;



202 (f) Filter or nonfilter;  
203 (g) Package description, such as soft pack or box;  
204 (h) Marking approved in accordance with Section 5;  
205 (i) The name, address and telephone number of the  
206 laboratory, if different than the manufacturer that conducted the  
207 test; and  
208 (j) The date that the testing occurred.

209 (3) The certifications shall be made available to the  
210 Attorney General for purposes consistent with this section and the  
211 Commissioner of Revenue for the purposes of ensuring compliance  
212 with this section.

213 (4) Each cigarette certified under this section shall be  
214 recertified every three (3) years.

215 (5) For each cigarette listed in a certification, a  
216 manufacturer shall pay to the State Fire Marshal a Two Hundred  
217 Fifty Dollar (\$250.00) fee. The State Fire Marshal is authorized  
218 to annually adjust this fee to ensure it defrays the actual costs  
219 of the processing, testing, enforcement and oversight activities  
220 required by this section.

221 (6) There is established in the State Treasury a separate,  
222 nonreverting fund to be known as the "Reduced Cigarette Ignition  
223 Propensity and Firefighter Protection Act Enforcement Fund." The  
224 fund shall consist of all certification fees submitted by  
225 manufacturers, and shall, in addition to any other monies made  
226 available for such purpose, and subject to appropriation therefor  
227 by the Legislature, be available to the State Fire Marshal solely  
228 to support processing, testing, enforcement and oversight  
229 activities under this section.

230 (7) If a manufacturer has certified a cigarette pursuant to  
231 this section, and thereafter makes any change to such cigarette  
232 that is likely to alter its compliance with the reduced cigarette  
233 ignition propensity standards required by this section, that  
234 cigarette shall not be sold or offered for sale in this state



235 until the manufacturer retests the cigarette in accordance with  
236 the testing standards set forth in Section 3 and maintains records  
237 of that retesting as required by Section 3. Any altered cigarette  
238 which does not meet the performance standard set forth in Section  
239 3 may not be sold in this state.

240 **SECTION 5.** (1) Cigarettes that are certified by a  
241 manufacturer in accordance with Section 4 shall be marked to  
242 indicate compliance with the requirements of Section 3. The  
243 marking shall be in eight-point type or larger and consist of:

244 (a) Modification of the product UPC Code to include a  
245 visible mark printed at or around the area of the UPC Code. The  
246 mark may consist of alphanumeric or symbolic characters  
247 permanently stamped, engraved, embossed or printed in conjunction  
248 with the UPC Code; or

249 (b) Any visible combination of alphanumeric or symbolic  
250 characters permanently stamped, engraved or embossed upon the  
251 cigarette package or cellophane wrap; or

252 (c) Printed, stamped, engraved or embossed text that  
253 indicates that the cigarettes meet the standards of this section.

254 (2) A manufacturer shall use only one (1) marking, and shall  
255 apply this marking uniformly for all packages, including, but not  
256 limited to, packs, cartons, and cases, and brands marketed by that  
257 manufacturer.

258 (3) The State Fire Marshal shall be notified as to the  
259 marking that is selected.

260 (4) Prior to the certification of any cigarette, a  
261 manufacturer shall present its proposed marking to the State Fire  
262 Marshal for approval. Upon receipt of the request, the State Fire  
263 Marshal shall approve or disapprove the marking offered, except  
264 that the State Fire Marshal shall approve any marking in use and  
265 approved for sale in the State of New York pursuant to the New  
266 York Fire Safety Standards for Cigarettes. Proposed markings



267 shall be deemed approved if the State Fire Marshal fails to act  
268 within ten (10) business days of receiving a request for approval.

269 (5) No manufacturer shall modify its approved marking unless  
270 the modification has been approved by the State Fire Marshal in  
271 accordance with this section.

272 (6) Manufacturers certifying cigarettes in accordance with  
273 Section 4 shall provide a copy of the certifications to all  
274 wholesale dealers and agents to which they sell cigarettes, and  
275 shall also provide sufficient copies of an illustration of the  
276 package marking utilized by the manufacturer pursuant to this  
277 section for each retail dealer to which the wholesale dealers or  
278 agents sell cigarettes. Wholesale dealers and agents shall  
279 provide a copy of these package markings received from  
280 manufacturers to all retail dealers to which they sell cigarettes.  
281 Wholesale dealers, agents and retail dealers shall permit the  
282 State Fire Marshal, the Commissioner of Revenue, the Attorney  
283 General and their employees to inspect markings of cigarette  
284 packaging marked in accordance with this section.

285 **SECTION 6.** (1) A manufacturer, wholesale dealer, agent or  
286 any other person or entity who knowingly sells or offers to sell  
287 cigarettes, other than through retail sale, in violation of  
288 Section 3, for a first offense shall be liable for a civil penalty  
289 not to exceed Ten Thousand Dollars (\$10,000.00) for each sale of  
290 such cigarettes, and for a subsequent offense shall be liable for  
291 a civil penalty not to exceed Twenty-five Thousand Dollars  
292 (\$25,000.00) for each sale of such cigarettes provided that in no  
293 case shall the penalty against any such person or entity exceed  
294 One Hundred Thousand Dollars (\$100,000.00) during any thirty-day  
295 period.

296 (2) A retail dealer who knowingly sells cigarettes in  
297 violation of Section 3 shall:

298 (a) For a first offense be liable for a civil penalty  
299 not to exceed Five Hundred Dollars (\$500.00), and for a subsequent



300 offense be liable for a civil penalty not to exceed Two Thousand  
301 Dollars (\$2,000.00), for each such sale or offer for sale of  
302 cigarettes, if the total number of cigarettes sold or offered for  
303 sale in such sale does not exceed one thousand (1,000) cigarettes;  
304 or

305 (b) For a first offense be liable for a civil penalty  
306 not to exceed One Thousand Dollars (\$1,000.00), and for a  
307 subsequent offense be liable for a civil penalty not to exceed  
308 Five Thousand Dollars (\$5,000.00), for each such sale or offer for  
309 sale of such cigarettes, if the total number of cigarettes sold or  
310 offered for sale in such sale exceeds one thousand (1,000)  
311 cigarettes provided that this penalty against any retail dealer  
312 shall not exceed Twenty-five Thousand Dollars (\$25,000.00) during  
313 a thirty-day period.

314 (3) In addition to any penalty prescribed by law, any  
315 corporation, partnership, sole proprietor, limited partnership or  
316 association engaged in the manufacture of cigarettes that  
317 knowingly makes a false certification pursuant to Section 4 shall,  
318 for a first offense, be liable for a civil penalty of at least  
319 Seventy-five Thousand Dollars (\$75,000.00), and for a subsequent  
320 offense a civil penalty not to exceed Two Hundred Fifty Thousand  
321 Dollars (\$250,000.00) for each such false certification.

322 (4) Any person violating any other provision in this section  
323 shall be liable for a civil penalty for a first offense not to  
324 exceed One Thousand Dollars (\$1,000.00), and for a subsequent  
325 offense shall be liable for a civil penalty not to exceed Five  
326 Thousand Dollars (\$5,000.00), for each such violation.

327 (5) Any cigarettes that have been sold or offered for sale  
328 that do not comply with the performance standard required by  
329 Section 3 shall be subject to forfeiture and, upon forfeiture,  
330 destroyed; provided, however, that prior to the destruction of any  
331 cigarette pursuant to this section, the true holder of the



332 trademark rights in the cigarette brand shall be permitted to  
333 inspect the cigarette.

334 (6) In addition to any other remedy provided by law, the  
335 State Fire Marshal or Attorney General may file an action in  
336 circuit court for a violation of this section, including  
337 petitioning for injunctive relief or to recover any costs or  
338 damages suffered by the state because of a violation of this  
339 section, including enforcement costs relating to the specific  
340 violation and attorney's fees. Each violation of this section or  
341 of rules or regulations adopted under this section constitutes a  
342 separate civil violation for which the State Fire Marshal or  
343 Attorney General may obtain relief.

344 **SECTION 7.** (1) The State Fire Marshal may promulgate rules  
345 and regulations, pursuant to the Administrative Procedures Act,  
346 necessary to effectuate the purposes of this section.

347 (2) The Commissioner of Revenue in the regular course of  
348 conducting inspections of wholesale dealers, agents and retail  
349 dealers, may inspect such cigarettes to determine if the  
350 cigarettes are marked as required by Section 5. If the cigarettes  
351 are not marked as required, the Commissioner of Revenue shall  
352 notify the State Fire Marshal.

353 **SECTION 8.** To enforce the provisions of this section, the  
354 Attorney General and the State Fire Marshal are hereby authorized  
355 to examine the books, papers, invoices and other records of any  
356 person in possession, control or occupancy of any premises where  
357 cigarettes are placed, stored, sold or offered for sale, as well  
358 as the stock of cigarettes on the premises. Every person in the  
359 possession, control or occupancy of any premises where cigarettes  
360 are placed, sold or offered for sale, is hereby directed and  
361 required to give the Attorney General and the State Fire Marshal  
362 the means, facilities and opportunity for the examinations  
363 authorized by this section.



364           **SECTION 9.** There is hereby established in the State Treasury  
365 a special fund to be known as the "Fire Prevention and Public  
366 Safety Fund." The fund shall consist of all monies recovered as  
367 penalties under Section 6. The monies shall be deposited to the  
368 credit of the fund and shall, in addition to any other monies made  
369 available for such purpose and subject to appropriation therefor  
370 by the Legislature, be made available to the State Fire Marshal to  
371 support fire safety and prevention programs.

372           **SECTION 10.** Nothing in this section shall be construed to  
373 prohibit any person or entity from manufacturing or selling  
374 cigarettes that do not meet the requirements of Section 3 if the  
375 cigarettes are, or will be, stamped for sale in another state or  
376 are packaged for sale outside the United States and that person or  
377 entity has taken reasonable steps to ensure that such cigarettes  
378 will not be sold or offered for sale to persons located in this  
379 state.

380           **SECTION 11.** Notwithstanding any other provision of law, the  
381 local governmental units of this state may neither enact nor  
382 enforce any ordinance or other local law or regulation conflicting  
383 with, or preempted by, any provision or with any policy of this  
384 state expressed by this act, whether that policy be expressed by  
385 inclusion of a provision in this act or by exclusion of that  
386 subject from this act.

387           **SECTION 12.** This act shall become effective July 1, 2008,  
388 and shall be repealed if a federal reduced cigarette ignition  
389 propensity standard that preempts this act is adopted and becomes  
390 effective, as certified by the Attorney General.

